

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
E and V Consultants and)	Agreed Order No.
Construction Managers)	
Minneapolis, Minnesota 55422)	EPA-5-98-113(a) MI-11
)	
Respondent.)	
)	
Proceeding Pursuant to Sections)	
113(a) (3) and 114(a) of the Clean)	
Air Act, 42 U.S.C. §§ 7413(a) (3))	
and 7414(a).)	

STATUTORY AUTHORITY

The following Order is issued pursuant to Sections 113(a) (3) and 114(a) of the Clean Air Act ("Act"), 42 U.S.C. §§ 7413(a) (3) and 7414(a).

The United States Environmental Protection Agency ("U.S. EPA") and the Respondent, E and V Consultants and Construction Managers, agree as follows:

STIPULATIONS

1. Respondent, E and V Consultants and Construction Managers ("E & V"), is a corporation incorporated under the laws of the State of Michigan (State). As such, Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

2. Respondent admits that U.S. EPA has jurisdiction to issue this Order. Respondent agrees not to contest such jurisdiction in any proceeding to enforce the provisions of this Order.

3. Respondent neither admits nor denies the specific findings contained in paragraphs 13 through 23 of this Order.

4. Respondent consents to the issuance of the Final Order hereinafter set forth.

5. If Respondent fails to comply with any provision contained in this Agreed Order, Respondent waives any rights it may possess in law or in equity to challenge the authority of the U.S. EPA to bring a civil action in the appropriate district court of the United States to compel compliance with the Agreed Order and/or to seek a penalty for noncompliance.

STATUTORY AND REGULATORY BACKGROUND

6. Section 112(b) of the Act, 42 U.S.C. § 7412(b)¹, Pub. L. No. 101-549, 104 Stat. 2399, requires the Administrator of U.S. EPA ("Administrator") to publish a list of pollutants that are determined to be hazardous and to prescribe emission standards for each such pollutant. These emission standards constitute the National Emission Standards for Hazardous Air Pollutants ("NESHAP").

7. In accordance with Section 112(b) of the Act, 42 U.S.C. § 7412(b), the Administrator identified asbestos as a hazardous air

¹The statutory citations in paragraphs 6 and 7 refer to the Sections of the Act prior to enactment of the Clean Air Act Amendments of 1990. All other citations refer to the Act as amended on November 15, 1990.

pollutant and promulgated the NESHAP for asbestos, which includes regulations governing the emission, handling and disposal of asbestos. 40 C.F.R. §§ 61.140-61.157.

8. To determine which requirements apply to the owner or operator of a renovation activity, the affected facility or part of the facility must be thoroughly inspected for the presence of asbestos prior to the commencement of the renovation. 40 C.F.R. § 61.145(a).

9. The requirements of 40 C.F.R. § 61.145(b) and (c) apply to a facility being renovated if the combined amount of regulated asbestos-containing material ("RACM") to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least eighty (80) linear meters (260 linear feet) on pipes; at least fifteen (15) square meters (160 square feet) on other facility components; or at least one (1) cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously. 40 C.F.R. § 61.145(a)(4).

10. Each owner or operator of a renovation activity to whom the requirements of 40 C.F.R. § 61.145 apply is required to provide the Administrator with written notice of intention to renovate. 40 C.F.R. § 61.145(b). The owner or operator of a renovation activity in Michigan may satisfy this requirement by providing the Michigan Department of Environmental Quality ("MDEQ") with written notice of intention to renovate.

11. Each owner or operator of a renovation activity to whom the requirements of 40 C.F.R. § 61.145(c) apply is required to adequately wet RACM while it is being stripped and to adequately wet RACM that has been removed or stripped and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150. 40 C.F.R. § 61.145(c).

12. The asbestos NESHAP prohibits RACM from being stripped at a facility subject to the requirements of 40 C.F.R. § 61.145 unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, properly trained in the provisions of the asbestos NESHAP and the means of complying with such provisions, is present. 40 C.F.R. § 61.145(c)(8).

FINDINGS

U.S. EPA finds as follows:

13. Respondent is and was at all times relevant to this Order responsible for supervising a renovation activity at a building located at 5016 Main Street, Onkama, Michigan ("the facility").

14. The building located at 5016 Main Street, Onkama, Michigan, is, and was at all times relevant to this Order, a "facility" as defined at 40 C.F.R. § 61.141.

15. Respondent supervised the renovation operation at the facility on or about June 25, 1997. The renovation operation included removal of ceiling tiles, which became and/or had a high probability of becoming crumbled, pulverized, or reduced to powder in

the course of renovation. Laboratory analysis of samples taken from the ceiling tiles demonstrated that the samples contained more than one-percent asbestos. Therefore, the ceiling tiles constituted regulated asbestos-containing material ("RACM") within the meaning of 40 C.F.R. § 61.141.

16. The combined amount of RACM that was to be stripped, removed, dislodged, cut, drilled, or disturbed during the renovation activity at the facility was at least 80 linear meters (260 linear feet) of pipe insulation, or at least 15 square meters (160 square feet) on other facility components, or 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

17. At all times relevant to this Order, Respondent was an "owner or operator of a renovation activity" as defined at 40 C.F.R. § 61.141, to whom the requirements of 40 C.F.R. § 61.145(b) and (c) applied. 40 C.F.R. § 61.145(a)(4).

18. As the owner or operator of a renovation activity to whom the requirements of 40 C.F.R. § 61.145 applied, Respondent was required under 40 C.F.R. § 61.145(a) to conduct an inspection for the presence of asbestos prior to commencing the renovation activity. Respondent failed to conduct an inspection for the presence of asbestos prior to commencing the renovation activity, as required under 40 C.F.R. § 61.145(a), and Respondent's failure to conduct this

inspection for asbestos constitutes a violation of 40 C.F.R. § 61.145(a) and Section 112 of the Act, 42 U.S.C. § 7412.

19. As the owner or operator of a renovation activity to which the requirements of 40 C.F.R. § 61.145 applied, Respondent was required under 40 C.F.R. § 61.145(b) to provide U.S. EPA with written notice of its intention to renovate at least ten (10) working days before asbestos stripping or removal work or any other activity began. Respondent failed to give such written notice of its intention to renovate. Respondent's failure to give such notice constitutes a violation of 40 C.F.R. § 61.145(b) and Section 112 of the Act, 42 U.S.C. § 7412.

20. As the owner or operator of a renovation activity to which the requirements of 40 C.F.R. § 61.145 applied, Respondent was required under 40 C.F.R. § 61.145(c) (1) to remove all RACM from the facility being renovated before any activity began that would break up, dislodge, or similarly disturb the material. Respondent failed to remove all RACM from the facility being renovated before any activity began that would break up dislodge, or similarly disturb the material, and such failure constitutes a violation of 40 C.F.R. § 61.145(c) (1) and Section 112 of the Act, 42 U.S.C. § 7412.

21. Under 40 C.F.R. § 61.145(c) (6), Respondent was required to adequately wet all RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150. Respondent failed to adequately

wet the RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal. Respondent's failure to adequately wet the RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal constitutes a violation of 40 C.F.R. § 61.145(c)(6) and Section 112 of the Act, 42 U.S.C. § 7412.

22. As the owner or operator of a renovation activity to which the requirements of 40 C.F.R. § 61.150(a) applied, Respondent was required under 40 C.F.R. § 61.150(a) to seal the asbestos-containing waste material in leak-tight containers while wet. The Respondent failed to seal the asbestos-containing waste material in leak-tight containers while wet. Respondent's failure to seal the asbestos-containing waste material in leak-tight containers while wet constitutes a violation of 40 C.F.R. § 61.150(a) and Section 112 of the Act, 42 U.S.C. § 7412.

23. As the owner or operator of a renovation activity to which the requirements of 40 C.F.R. § 61.150(b) applied, the Respondent was required under 40 C.F.R. § 61.150(b) to deposit all asbestos-containing waste material as soon as was practical at an EPA approved disposal site. The Respondent failed to deposit all asbestos-containing waste material as soon as was practical at an EPA approved disposal site. Respondent's failure to deposit all asbestos-containing waste material as soon as was practical at an EPA approved

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disposal site constitutes a violation of 40 C.F.R. § 61.150(b) and Section 112 of the Act, 42 U.S.C. § 7412.

ORDER

After a thorough investigation of all relevant facts, including the seriousness of the violations and efforts made by E & V to comply with applicable regulations, U.S. EPA has determined that the compliance measures set forth herein are agreed and ordered and are reasonable.

THEREFORE, IT IS HEREBY ORDERED AND AGREED THAT:

24. Respondent, E & V, shall hereafter comply with Section 112 of the Act, 42 U.S.C. § 7412, and with all the requirements of the asbestos NESHAP, 40 C.F.R. Part 61, Subpart M, as it may be amended or recodified hereafter, including but not limited to the following:

- a. With respect to any "facility" or part of a "facility" (as those terms are defined in 40 C.F.R. § 61.141) the demolition or renovation of which Respondent intends to supervise, Respondent shall thoroughly inspect or arrange for the inspection or ensure that an inspection has been completed of the facility for the presence of asbestos or asbestos-containing material prior to the commencement of the demolition or renovation, as required by 40 C.F.R. § 61.145(a).
- b. With respect to any "facility" or part of a "facility" (as those terms are defined in 40 C.F.R. § 61.141) the

demolition or renovation of which Respondent intends to supervise, Respondent shall submit or cause to be submitted notices of intent to demolish or renovate in compliance with the requirements of 40 C.F.R. § 61.145(a) and (b), and shall submit or cause to be submitted such notices to the appropriate State and regional contacts as required by the State, and (for the period during which this Order is effective as set forth in paragraph 35) to the U.S. EPA, in a timely manner.

- c. Notices required by subparagraph 23.b. to be sent to U.S. EPA shall be sent to:

Jeffrey Gahris
Air Enforcement and Compliance Assurance Branch
Mail Code (AE-17J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

25. Respondent agrees that, with respect to any facility access to which is under the control of Respondent, any authorized representative of U.S. EPA or the Michigan Department of Environmental Quality, Air Quality Division (including a designated contractor) may, upon presentation of credentials, and without prior notice, enter such facility at any time a demolition or renovation operation is being conducted to determine compliance with the requirements of the Act, the asbestos NESHAP, and the provisions of this Order, and may take such samples and photographs and inspect and

copy such records as U.S. EPA may deem necessary. This paragraph is in addition to, and not in limitation of, U.S. EPA's authority to investigate, inspect, or enter premises pursuant to any laws, permits, or regulations.

REPORTING

26. Within thirty (30) days of the completion of any demolition or renovation activity which Respondent, E & V, supervises during the life of this Order, Respondent shall submit a Report certifying that it has complied fully with the provisions of paragraph 24 this Order; or if E & V has failed to comply with such provisions, it shall provide a detailed description of each failure to comply. Respondent shall include the following information in such Report:

- a. The amount of asbestos removed;
- b. The name and address of the licensed abatement contractor which performed the asbestos removal; or if an abatement contractor is not used, the names and addresses of the entities and/or individuals that performed the asbestos removal, including the name and address of the person who satisfies the requirements of 40 C.F.R. § 61.145(c) (8); and
- c. Copies of the training credentials of the person named in paragraph 25.b. above who satisfies the requirements of 40 C.F.R. § 61.145(c) (8).

- d. Copies of waste shipment records satisfying the requirements of 40 C.F.R. § 61.150(d) and signed by the owner or operator of the designated disposal site, as evidence of the proper disposal of the asbestos removed.

27. All submissions required by paragraph 26 of this Order shall be postmarked no later than thirty (30) days after the demolition or renovation operation, and addressed to:

Chief, Air Enforcement and Compliance Assurance
Branch
Attn: Tracker
Mail Code (AE-17J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

28. Any notice, report, or other document submitted by Respondent pursuant to this Order, which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order, shall be certified by a responsible official of E & V. The certification of such responsible official shall be in the following form: "I certify that the information contained in or accompanying this submission is true, accurate, and complete."

GENERAL PROVISIONS

29. This Order constitutes final disposition of the violations described in paragraphs 18, 19, 20, 21, 22, and 23.

30. Each party shall bear its own costs and attorneys' fees with regard to the violations resolved by this Order.

31. Except as specified in paragraph 28, nothing in this Order shall be construed to relieve Respondent from its obligation to comply with all applicable local, State and Federal laws and regulations, including applicable provisions of 40 C.F.R. Part 61.

32. Nothing in this Order shall be construed to be a waiver by the Administrator of the U.S. EPA of any rights or remedies under the Act, including, but not limited to, Section 303 of the Act, 42 U.S.C. § 7603.

33. Nothing in this Order shall be construed to restrict in any way U.S. EPA's authority under Section 114 of the Act, 42 U.S.C. § 7414.

34. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information in an administrative enforcement action or investigation involving U.S. EPA and specific individuals or entities.

35. The provisions of this Order shall apply to and be binding upon Respondent, E & V, and its agents, servants, employees and any successor(s) in interest. Respondent shall give written notice of this Order to any successor(s) in interest prior to transfer of ownership, and shall verify simultaneously to the Director, Air and Radiation Division of U.S. EPA, Region 5, that such notice has been given.

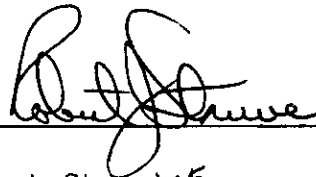
36. This Order is effective on the date of signature by the Air and Radiation Division Director. The Order will expire one year from the effective date, provided that U.S. EPA determines that Respondent has complied with all the terms of the Order.

SIGNATORIES

Each undersigned representative of a party to this Agreed Order agrees that he or she is fully authorized to enter into the terms and conditions of this Agreed Order and to legally bind such party to this document.

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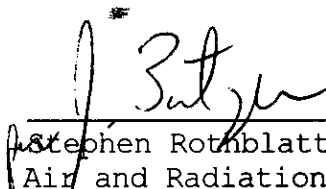
Date



Robert Struve
E and V Consultants and
Construction Managers
5801 Duluth Street, #345
Minneapolis, Minnesota 55422

10/19/98

Date



Stephen Rothblatt, Acting Director
Air and Radiation Division
Region 5
U.S. Environmental Protection Agency